

A COMPARATIVE ANALYSIS OF EUROPEAN AND BRITISH LEGAL TEXTS: DIRECTIVES VS. STATUTES

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Abstract: When doing business in the European Union, it is important to know and understand the EU legislation. Legal language is often incomprehensible to the general public. Specialist writings should be directed not only to an audience with expert knowledge in the field but also to ordinary people. The purpose of this article is to analyze the language of law used in British and European legislative documents. Legal language is defined as a technical language, a language which is used by specialists. Legal language is characterized by an impersonal style with formulaic structures, long sentences, typical legal vocabulary and syntactic complexity. I will try to point out the accuracy and precision used in legal style as well as the different ways of expressing modality. The European directives used in this work were taken from the Official Journal of the European Communities and the Acts of Parliament from the online UK Statute Law Database.

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Introduction

Legal language is defined as a technical language, a language which is used by specialists. Legal language is characterized by an impersonal style with formulaic structures, long sentences, typical legal vocabulary and syntactic complexity. Modern legal English gave rise to the question whether it may be treated as a separate dialect, register or sublanguage. The main source of law in the British legal system is Common Law, a system which is based on the decision taken by judges and courts. The law includes many different activities, from the drafting of statutes to the contracting of agreement between individuals. The task of the legal profession is to transfer laws and private agreements into written documents and this profession has developed its own style or register. (Trosborg, 1997: 28-29)

Problems with Drafting the EU Legislation

Legislative drafting is different from other varieties of English and it has been criticized for its ambiguous expressions, complex syntax structure, archaisms and repetitions. Generally speaking legislative documents are often incomprehensible for the non-specialist public. The European legislative drafting favors openness and generality while the UK common law is characterized by precision and particularity. European law was influenced by the Roman law. The English law is based on the

Napoleonic Code. British legislative writing has been criticized for its linguistic conservatism and ambiguous structures. Community legislative acts are drafted clearly, simply and precise, so that they can be unambiguous and easy to understand. European legislation is characterized by precision and simplicity.

The texts of the EU secondary legislation which include *Decisions*, *Directives*, *Regulations and Recommendations* are normative texts and the discourse, the style has to be precise in order to avoid ambiguity. The legal draftsmen try to describe in these legislative acts a set of obligations and rights, permissions and prohibitions as precisely and clearly as possible. Drafters have to be aware of the European multilingual environment and therefore they have to maintain coherence among different linguistic versions of the same text. That is why the language structure in European legislation is more accessible than the language structure in British Acts of Parliament. But there is also one common feature in the formulation of these legal acts that is their highly standardized form. It is said that the UK legislation lacks simplicity and clarity. The language used in many Acts is obscure and complex and the parliamentary draftsmen's desire for precision has led to over-elaboration. UK and EU legislation were formed under different circumstances. For example British legislative writing has evolved through a long continuous process. The EU legislation is relatively new and was not affected by centuries of development. Therefore the EU legislation is quite general and offers a wide scope for interpretation. On the other hand the UK legislation tends to be specific, providing the reader with as many details as possible.

Ambiguity and Precision in EU and UK Legislative Documents

Accuracy and precision are the essential features of written legal documents. The main purpose of legislation, as I mentioned before, is to confer rights or to impose obligations. Ambiguity may be caused by the visual arrangement of the text. In the *Child Maintenance and Other Payments Act*, the text is arranged in a block form. This Act contains five parts, each part containing a number of sections and subsections. The Council Directive is shorter, the text being disposed on two columns. It has four chapters, each chapter containing a number of articles. The European directive may seem easier for the reader due to its length. Another reason for ambiguity may also be the sentence length. A reasonable sentence length would be of 30 words per sentence which means that the British statute is clearer easier to be understood than the European directive. Another way of preserving the precision and clarity of the text is also related to its structure. If the text is broken up with headings and subheadings, the readers will find their way around the document quickly and easily. And this is the case of the *Child Maintenance and Other Payments Act*.

In the text of the European directive there is a binomial construction *employment and occupation* which is repeated throughout the whole text. As David Mellinkoff says it is still "...fashionable to use many phrases made up of synonyms, and the repetition of these phrases accustoms the profession to the imprecise pattern of two-words-for one."(Mellinkoff, 1994: 363) Ambiguity may be avoided by preferring short words to long ones and by minimizing jargon and technical terms (instead of *pursuant to* these should be used *under* or *in accordance with*, instead of *prior to* one should use *before*). As for example: "Any committee or sub-committee established under this paragraph may consist of or include persons who are not members of the Commission."(*Child Maintenance and Other Payments Act* 2008)

Another way of gaining precision is by avoiding the use of pronouns and by repeating nouns. Pronouns are said to have an ambiguous reference but in both texts we find the indefinite, impersonal pronoun *it*, which acts as a reference to what has already been mentioned. As for example: "...the strategic direction of the Commission and the manner in which it has been kept under review..." (Child Maintenance and Other Payments Act 2008)

It also functions as a formal subject in an impersonal construction: "It is important to respect such fundamental rights and freedoms." (DIRECTIVE 2007/64/EC)¹³ Pronouns are usually used to avoid unnecessary repetition in a text. In legal language pronouns are avoided because of their ambiguous reference. This rule applies especially in the case of the third person, personal pronoun. The avoidance of these personal pronouns helps to reduce the use of sexist language, to obscure who the real actor is and also gives an aura of impersonality and authoritativeness.

That is why legislative texts have adopted the use of gender neutral language and use the indefinite pronoun *any* in combination with different nouns as in the following example:

"relevant person" means any person who, in the course of his official duties..." (Criminal Justice and Immigration Act 2008:213)

Passives are used for strategic imprecision because they obscure the actor. A passive sentence might say that a thing must be done by someone or it may leave the agent out. The passives without an agent fail to show who has the duty to act: "The content of these goods or services *may be produced* either by a third party or by the operator..." / "However, Member States should have the possibility to provide that micro-enterprises, as *defined by* Commission Recommendation 2003/361/EC of 6 May 2003 concerning the..." In these sentences the agent is specified for the sake of clarity.

Conclusions

Many critics have argued that the sentences from legislative writings are too long and that is why many readers have to reread each section. That is why the British style prefers to break up the sentence into smaller paragraphs making the text easier to understand. British Acts of Parliament tend to provide the reader with a lot of descriptions, additional information or definitions, while the European drafters state their provisions without making use of any digressions. The European legislation tries to reflect accurately the substance of the text because legislation has to be made accurate for all Member States. In terms of grammar and syntax both types of legislative texts share common feature and it is obvious the fact that the European style was deeply influenced by the British one.

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¹³ DIRECTIVE 2007/64/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC

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